UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x
RICHARD A. LESLIE CO., INC.,

                    Plaintiff,

              -against-   07 Civ. 5933 (LAK)

BIRDIE, LLC, et ano.,

                    Defendants.
- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

On November 26, 2007, I denied plaintiff's motion for a preliminary injunction. The memorandum and order observed, *en passant,* that plaintiff had not filed any reply papers in support of the motion.

Although I was not aware of it when the earlier memorandum and order was filed, it has come to my attention that plaintiff in fact filed reply papers under seal prior to the disposition of the motion. Accordingly, I *sua sponte* grant reconsideration of the motion in order to take account of the reply papers. The reply papers, however, change nothing.

First, I denied the motion, in the first instance, on the ground that the delay between the termination of negotiations between the parties and plaintiff's filing of the motion for a preliminary injunction was unjustified. Nothing in the reply papers alters that conclusion.

Second, I found no real threat of irreparable injury in light of plaintiff's January 2007 announcement that it was going out of business and the lack of any substantial evidence, notwithstanding that announcement, that it has continued. Mr. Solomon's protestation in his second declaration that plaintiff had gross sales of Birdie branded apparel in the year ended February 28, 2007 is not inconsistent with this conclusion in the slightest respect. Indeed, the going out of business announcement indicated that plaintiff would fill orders placed before the end of February 2007. Conspicuously lacking is any real indication that it continues in business today and would be injured by defendants' activities.

Accordingly, reconsideration is granted. On reconsideration, the Court adheres to its

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original decision denying the motion for a preliminary injunction. There is no occasion to address to third point relied upon in the memorandum and order in light of the foregoing.

SO ORDERED.

Dated: November 27, 2007

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Lewis A. Kaplan
United States District Judge

(The manuscript signature above is not an image of the signature on the original document in the Court file.)